

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID TROUPE,

Plaintiff,

v.

WALTER J. END,

Defendant.

No. 13-CV-5036-EFS

**ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Before the Court, without oral argument, is Defendant Walter End's Motion for Summary Judgment. ECF No. 50. Defendant asks the Court to dismiss Plaintiff David Troupe's Eighth Amendment claim as a matter of law, to find that Defendant is entitled to qualified immunity as a matter of law, to find that Plaintiff failed to support a claim for injunctive relief, and to apply a strike against Plaintiff under 42 U.S.C. § 1915. *Id.* at 3-4. Plaintiff opposes the motion. ECF No. 91. In this 42 U.S.C. § 1983 lawsuit, Mr. Troupe alleges that his Eighth Amendment right to be free from cruel and unusual punishment was violated by Mr. End, a relatively new Psychology Associate (PA) at the Washington State Penitentiary (WSP), who was

1 deliberately indifferent to the threat of serious harm to Mr. Troupe
2 on December 2, 2011, when Mr. End responded slowly to Mr. Troupe's
3 declaration of a mental health emergency.

4 On December 2, 2011, Mr. End had conducted a routine check of
5 Mr. Troupe who did not appear to be experiencing any mental distress
6 or other emergency. After Mr. End left the area, Mr. Troupe declared
7 that he was experiencing a mental health emergency. Mr. End responded
8 within 20 minutes. During that 20-minute period, Mr. Troupe did not
9 harm himself or suffer any injury. When Mr. End returned to Mr.
10 Troupe's cell, Mr. Troupe did not appear to be suffering any
11 discernible mental health emergency. When Mr. End tried to discuss
12 the asserted mental health emergency with him, Mr. Troupe declined to
13 communicate with Mr. End, though he was capable of doing so. Having
14 determined that Mr. Troupe was not experiencing an emergency, Mr. End
15 left the area once again, and within minutes, Mr. Troupe cut himself.
16 Mr. End was notified, responded timely, and acted properly in
17 response. Having reviewed the pleadings and the file in this matter,
18 the Court is fully informed and finds no cruel and unusual punishment
19 in violation of the Eighth Amendment involving either Mr. End's
20 response to Mr. Troupe's self-declared mental health emergency or his
21 response to Mr. Troupe cutting himself. Therefore, the Court grants
22 summary judgment to Defendant.

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I. FACTUAL BACKGROUND¹

Plaintiff David Troupe is an inmate who has been incarcerated by the Washington Department of Corrections (DOC) since 1999. May 3, 2013 Mental Health Appraisal at 091, Ex. 1, ECF No. 53-1; see also Offender Mgmt. Network Info., Attach. A, ECF No. 14-1, W.D. Wash. Case No. 3:14-CV-5650-BHS-JRC. He has spent much of that time in the Intensive Management Unit (IMU). May 3, 2013 Mental Health Appraisal at 086, Ex. 1, ECF No. 53-1. During his incarceration, Mr. Troupe has committed hundreds of infractions. Infraction Report, Ex. 10, ECF No. 54-1. Additionally, Mr. Troupe has filed at least 14 cases against DOC staff in state and federal court, four of which are currently pending before this Court. See Ex. 11, ECF No. 54-2; Case No. 13-CV-5028-EFS; Case No. 13-CV-5038-EFS; Case No. 15-CV-5021-EFS.

Mr. Troupe has a documented history of obstructive, manipulative, and staff-splitting behaviors and frequently threatens self-harm to achieve his objectives. June 4, 2013 Email from Tamara Russell at 081, Ex. 1, ECF No. 53-1; Mental Health Appraisal at 086-87, Ex. 1, ECF No. 53-1; Jan. 1, 2013 Primary Encounter Report (PER) at 105-06, Ex. 1, ECF No. 53-1; May 4, 2012 Suicide Prevention Assessment at 109, Ex. 1, ECF No. 53-1; Sept. 19, 2012 PER at 111-12, Ex. 1, ECF No. 53-1; Aug. 28, 2012 PER at 116, Ex. 1, ECF No. 53-1;

¹ When considering this motion and creating this factual section, the Court (1) believed the undisputed facts and the non-moving party's evidence, (2) drew all justifiable inferences therefrom in the non-moving party's favor, (3) did not weigh the evidence or assess credibility, and (4) did not accept assertions made by the non-moving party that were flatly contradicted by the record. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007).

1 Aug. 27, 2012 PER at 117, Ex. 1, ECF No. 53-1; May 21, 2012 PER at
2 118, Ex. 1, ECF No. 53-1; Aug. 13, 2010 Psychiatric Consultation at
3 124, Ex. 1, ECF No. 53-1; Nov. 30, 2011 Note at 132, Ex. 1, ECF No.
4 53-1; Sept. 22, 2010 Admission Note at 133, Ex. 1, ECF No. 53-1;
5 Specialized Protocol at 163 (Aug. 17, 2010), Ex. 1, ECF No. 53-1; Feb.
6 29, 2012 PER at 166, Ex. 1, ECF No. 53-1; Feb. 24, 2012 PER at 167,
7 Ex. 1, ECF No. 53-1; Feb. 1, 2012 PER at 168, Ex. 1, ECF No. 53-1;
8 Nov. 4, 2011 PER at 172, Ex. 1, ECF No. 53-1; Jan. 22, 2010 Note at
9 183, Ex. 3, ECF No. 53-3; Jan. 10, 2010 Note at 184, Ex. 3, ECF No.
10 53-3; Oct. 22, 2009 Note at 185, Ex. 3, ECF No. 53-3; Jan. 23, 2012
11 PER at 186, Ex. 3, ECF No. 53-3; Feb. 21, 2013 PER at 193, Ex. 4, ECF
12 No. 53-4; Dec. 17, 2011 PER at 202, Ex. 4, ECF No. 53-4; Jan. 23, 2012
13 Emergency Grievance at 218, Ex. 6, ECF No. 53-6; Decl. of Karen
14 Gleason at 2-3, ECF No. 55; Decl. of Bonnie Klahn at 2, ECF No. 56;
15 Nov. 19, 2010 Psychology Suicide Risk Assessment, Attach. 3, ECF No.
16 91-1.

17 For example, around the time of the events at issue in this
18 case, Mr. Troupe was requesting to work with a particular mental
19 health provider (Ms. Calkins) and trying to avoid working with the
20 other two mental health providers (Mr. End and Mr. Beck). Nov. 4,
21 2011 PER at 172, Ex. 1, ECF No. 53-1 (reporting Mr. Troupe appeared
22 frustrated that he was not seen by Ms. Calkins and that she is always
23 unavailable when he needs to talk to a counselor); Dec. 2, 2011
24 Suicide Risk Assessment at 180, Ex. 3, ECF No. 53-3 (requesting to
25 work with Ms. Calkins); David Troupe, Level 1-Initial Grievance at 211
26 (Dec. 6, 2011), Ex. 6, ECF No. 53-6 (requesting another mental health

1 provider); Appeal to Level II at 215 (Dec. 20, 2011), Ex. 6, ECF No.
2 53-6 (stating he does not feel comfortable with Mr. End or Mr. Beck
3 and asking to work with someone else); Appeal to Level III at 216
4 (Jan. 18, 2012), Ex. 6, ECF No. 53-6 ("Requesting to be assigned to
5 MHP Caukins [sic] since I do not get along with MHP Beck nor MHP
6 End. . . . Please assign me to MHP Caukins' [sic] case load."); Decl.
7 of Bonnie Klahn at 2, ECF No. 56.

8 Plaintiff asserts that the assessment of his behavior as
9 manipulative rather than suicidal and a risk of serious harm began in
10 summer 2011 when he threatened to file a lawsuit against WSP.
11 Response Brief at 15, ECF No. 91. This assertion is flatly
12 contradicted by the evidence in the record. See Jan. 22, 2010 Note at
13 183, Ex. 3, ECF No. 53-3; Jan. 10, 2010 Note at 184, Ex. 3, ECF No.
14 53-3; Oct. 22, 2009 Note at 185, Ex. 3, ECF No. 53-3; Nov. 19, 2010
15 Suicide Risk Assessment, Attach. 3, ECF No. 91-1; Sept. 22, 2010
16 Admission Note, Attach. 11, ECF No. 91-1 (characterizing Mr. Troupe's
17 behavior as manipulative prior to 2011).

18 Mr. Troupe has a history of declaring emergencies for non-
19 emergent reasons. See Jan. 4, 2012 PER at 169, Ex. 1, ECF No. 53-1
20 (declared mental health emergency to ask where Mr. Beck was located);
21 Mar. 6, 2010 Note at 182, Ex. 3, ECF No. 53-3 (declared mental health
22 emergency to complain about leaky pipe in his cell); Jan. 10, 2010
23 Note at 184, Ex. 3, ECF No. 53-3 (declared non-emergency chest pains
24 then denied chest pain and complained that he did not get a shower);
25 Oct. 22, 2009 Note at 185, Ex. 3, ECF No. 53-3 (reported feeling
26 suicidal then complained that he was not allowed to shower); Jan. 23,

1 2012 PER at 186, Ex. 3, ECF No. 53-3 (declared mental health emergency
2 then complained that his mail had been held for five weeks); Dec. 5,
3 2011 PER at 206, Ex. 5, ECF No. 53-5 (declared mental health emergency
4 because he wanted to talk about switching primary practitioners).
5 Plaintiff states that any stressful situation is an emergency for him
6 because it can cause thoughts of self-harm. Response Brief at 9, ECF
7 No. 91.

8 In October 2011, Defendant Walter End began working as a PA at
9 WSP and was assigned to work with Mr. Troupe. Decl. of Walter End at
10 1-2, ECF No. 53. The parties agree that Mr. End received yearly
11 suicide-prevention training. Response Brief at 5, ECF No. 91;
12 Defendant's Reply Statement of Facts at 3, ECF No. 100. When Mr.
13 Troupe was assigned to his caseload, Mr. End reviewed all five volumes
14 of Mr. Troupe's medical file. *Id.* at 3. Mr. Troupe has been
15 diagnosed with a number of mental health disorders over the years,
16 including attention deficit hyperactivity disorder, narcissistic
17 personality disorder, bipolar disorder, and antisocial personality
18 disorder. See Aug. 20, 2013 Psychiatric Evaluation at 076-78, Ex. 1,
19 ECF No. 53-1; Mental Health Appraisal at 086, Ex. 1, ECF No. 53-1;
20 July 27, 2011 Psychological Report at 227-28, Ex. 6, ECF No. 53-6;
21 Oct. 15, 2012 Medical Record at 249-50, Ex. 9, ECF No. 53-9; *see also*
22 Attach. 3, ECF No. 91-1. Mr. Troupe states that he has attempted
23 suicide four times, most recently in March 2009. Response Brief at
24 13, ECF No. 91; *see also* Attachs. 9 & 10, ECF No. 91-1.

25 Based on his review of Mr. Troupe's file and on his personal
26 observation of Mr. Troupe, Mr. End did not consider Mr. Troupe to be

1 at risk of suicide during the time Mr. End worked with him. Decl. of
2 Walter End at 16-17, ECF No. 53. Instead, Mr. End believed that all
3 of Mr. Troupe's attempts at self-harm were to gain a specific result.
4 *Id.* at 17. Documents in Mr. Troupe's medical records prepared by
5 other providers support Mr. End's assessment. See, e.g., Aug. 27,
6 2012 PER at 117, Ex. 1, ECF No. 53-1; May 21, 2012 PER at 118, Ex. 1,
7 ECF No. 53-1; Feb. 3, 2012 PER at 122, Ex. 1, ECF No. 53-1; Feb. 29,
8 2012 PER at 166, Ex. 1, ECF No. 53-1; July 27, 2011 Psychological
9 Report at 223, Ex. 6, ECF No. 53-6. Ms. Klahn, the WSP Mental Health
10 Program manager, agreed that Mr. Troupe was not an "imminent suicide
11 risk from the summer of 2011 through 2012 when he was at WSP." Decl.
12 of Bonnie Klahn at 4, ECF No. 56.

13 Mr. Troupe asserts that Mr. End knew that he had suicidal
14 tendencies. Response Brief at 5, ECF No. 91. He cites to a January
15 25, 2012 interview resulting from a Prison Rape Elimination Act
16 complaint filed by Mr. Troupe against Mr. End, in which Mr. End stated
17 that all of the times Mr. End saw Mr. Troupe at his cell front, "it
18 was emergent. He was either ripping his wound open, or peeling his
19 stitches out or slicing a new wound or something like that where there
20 was blood everywhere and it was a crisis situation." Attach. 1, ECF
21 No. 91-1. Even construing the facts in the light most favorable to
22 Mr. Troupe, this does not mean that all of Mr. Troupe's self-harm
23 events were emergencies or attempted suicide, but instead that Mr. End
24 often saw Mr. Troupe at cell front, not in the normal course of
25 treatment, but rather because Mr. Troupe was harming himself.
26 Therefore, Mr. Troupe provides no support for his assertion that Mr.

1 End believed that Mr. Troupe was suicidal, and it is undisputed that
2 Mr. End did not believe that Mr. Troupe was suicidal during the time
3 period relevant to this case.

4 Mr. Troupe also appears to assert that Mr. End should have known
5 that Mr. Troupe was at significant risk of suicide or serious harm
6 because other providers classified Mr. Troupe as suicidal in the past.
7 Mr. Troupe points to a statement by PA Thomas Roe on June 27, 2011
8 that, "Mr. Troupe is most capable of continually planning self harm
9 events, perhaps even suicidal events, while presenting as 'normal' and
10 baseline. For that reason, I shall continue with the restraint table
11 placement within the plan described below." June 27, 2011 PER,
12 Attach. 2, ECF No. 91-1. Mr. Roe wrote this in a PER Intake Note and
13 Initial Treatment Plan after Mr. Troupe had harmed himself twice in
14 the previous 72 hours and had been placed on the six-point restraint
15 table to prevent further self-harm. *Id.* Mr. Roe's Treatment Plan
16 addressed the question of how long Mr. Troupe should remain on the
17 restraint table. *Id.*

18 In response, Defendants cite the declaration of Mr. Roe in case
19 number 13-CV-5038 in which he states, "In the time I observed Mr.
20 Troupe and was involved in his treatment in 2011 and 2012, I never
21 evaluated Mr. Troupe to be suicidal." Decl. of Thomas Roe at 3, ECF
22 No. 86, Case No. 13-CV-5038. Less than a year after he made the
23 statement on which Mr. Troupe relies, Mr. Roe wrote that Mr. Troupe's
24 self-harm events were voluntary and "designed for legal issues and
25 grievances." Feb. 29, 2012 PER at 166, Ex. 1, ECF No. 53-1. Viewed
26 in context and together with his other statements, Mr. Roe's statement

1 on July 27, 2011, that Mr. Troupe was "perhaps even" capable of
2 planning suicidal events, does not indicate that Mr. Roe believed Mr.
3 Troupe was suicidal or suggest that Mr. End should have known that Mr.
4 Troupe was suicidal during the time period at issue in this case.
5 Additionally, Mr. Troupe has never asserted that he was suicidal
6 during the relevant time period.

7 The events at issue in this case occurred on December 2, 2011.
8 Complaint, ECF No. 1. At that time, Mr. Troupe was housed in the IMU
9 under a sharps restriction and orders for his fingernails to be cut at
10 a length that would prevent him from using them to cut himself. Decl.
11 of Walter End at 14, ECF No. 53; Aug. 30, 2012 Conditions of
12 Confinement - Mental Health at 113, Ex. 1, ECF No. 53-1; Aug. 29, 2012
13 PER at 114-15, Ex. 1, ECF No. 53-1; Specialized Protocol at 163 (Aug.
14 17, 2010), Ex. 1, ECF No. 53-1. Although Mr. Troupe's medical
15 providers frequently placed Mr. Troupe in restraints to prevent
16 continuing self-harm, they agreed it was preferable to keep Mr. Troupe
17 in the IMU and avoid placing him in restraints whenever possible.
18 Feb. 21, 2013 PER at 098, Ex. 1, ECF No. 53-1; May 21, 2012 PER at
19 118, Ex. 1, ECF No. 53-1; June 27, 2011 PER, Attach. 2, ECF No. 91-1.
20 Inmates in the IMU are checked at least every 30 minutes. Decl. of
21 Walter End at 14, ECF No. 53. Under DOC's Suicide Prevention Policy,
22 supervision of an inmate is increased when self-harm is a serious
23 concern, Ex. 8, ECF No. 53-8, but Mr. Troupe states that custody did
24 not do increased tier checks on December 2, 2011. Response Brief at
25 11, ECF No. 91. He provides no support for this assertion, although
26 the Court assumes it is based on his personal knowledge. *Id.*

1 On December 2, 2011, Mr. End checked on Mr. Troupe as part of
2 his regular duties, and Mr. Troupe "did not present as having any
3 mental health emergency." Decl. of Walter End at 15, ECF No. 53. The
4 officers on duty in the IMU had not noted any changes in Mr. Troupe's
5 behavior in their log books, which Mr. End checked. *Id.* At
6 approximately 3:45 pm, after Mr. End left the IMU, Mr. Troupe
7 contacted the booth officer and declared a mental health emergency.
8 David Troupe, Level 1-Initial Grievance at 211 (Dec. 6, 2011), Ex. 6,
9 ECF No. 53-6; Decl. of Walter End at 15, ECF No. 53. Approximately
10 ten to fifteen minutes later, around 4:00 pm, Mr. Troupe contacted the
11 booth officer again and stated that if he did not see someone within
12 five minutes he would harm himself. *Compare id.* (10 minutes later),
13 *with*, Second Amended Complaint at 1, ECF No. 16 (15 minutes later).
14 Mr. End arrived in the IMU approximately five minutes later, around
15 4:05 pm. David Troupe, Level 1-Initial Grievance at 211 (Dec. 6,
16 2011), Ex. 6, ECF No. 53-6; Decl. of Walter End at 15, ECF No. 53.
17 Mr. End "expected that Mr. Troupe was up to something due to his
18 specific demand that [Mr. End] be there within 5 minutes and based
19 upon his prior kites regarding the response time." Decl. of Walter
20 End at 15, ECF No. 53; *see also*, Mar. 18, 2012 Kite at 195, Ex. 4, ECF
21 No. 53-4.

22 Mr. Troupe states that he yelled to Mr. End that he was
23 "suicidal/self harmful" when Mr. End entered the IMU. Response Brief
24 at 7, ECF No. 91. He asserts that there is a report that will support
25 this but that the report is missing from the record. *Id.* Because
26 there is nothing in the record supporting his assertion—nothing in his

1 Level I Grievance, nothing in his Level II Appeal, nothing in his
2 Level III Appeal, and nothing in Mr. End's account of the event—the
3 Court discounts his assertion. See David Troupe, Level 1-Initial
4 Grievance at 211 (Dec. 6, 2011), Ex. 6, ECF No. 53-6; Appeal to Level
5 II at 215 (Dec. 20, 2011), Ex. 6, ECF No. 53-6; Appeal to Level III at
6 216 (Jan. 18, 2012), Ex. 6, ECF No. 53-6; Decl. of Walter End at 16,
7 ECF No. 53. Mr. Troupe states Mr. End walked upstairs and spoke to
8 other inmates. David Troupe, Level 1-Initial Grievance at 211 (Dec.
9 6, 2011), Ex. 6, ECF No. 53-6. According to Mr. Troupe, while Mr. End
10 was upstairs he could not see Mr. Troupe. Response Brief at 17, ECF
11 No. 91. Mr. End next walked downstairs and spoke to other inmates,
12 before "finally" checking on Mr. Troupe who "did not feel comfortable
13 talking to him." David Troupe, Level 1-Initial Grievance at 211 (Dec.
14 6, 2011), Ex. 6, ECF No. 53-6. Mr. Troupe stated that he felt
15 slighted because Mr. End talked to other inmates. Appeal to Level II
16 at 215 (Dec. 20, 2011), Ex. 6, ECF No. 53-6.

17 Mr. End declares that upon arriving in the IMU he looked in on
18 Mr. Troupe who appeared in no distress. Decl. of Walter End at 16,
19 ECF No. 53. Mr. End states that he asked Mr. Troupe about his well-
20 being and mental status but Mr. Troupe refused to respond, which was
21 typical behavior for him. *Id.* Mr. End remained in the IMU for
22 approximately 20 minutes, until approximately 4:25 pm, checking on
23 other offenders and monitoring Mr. Troupe's behavior.² *Id.* He again

24
25 ² Mr. Troupe asserts that an unknown inmate witness will testify that Mr. End
26 did not spend 10, 15, or 20 minutes in the IMU on December 2, 2011, but that
Plaintiff does not know his name. Response Brief at 19, ECF No. 91.
However, even if this unknown inmate were located, his proposed testimony
would conflict with Mr. Troupe's allegation that it took Mr. End 15 minutes

1 checked on Mr. Troupe before he left the area, and Mr. Troupe still
2 appeared fine with no indication of distress. *Id.*

3 Although Mr. Troupe and Mr. End provide somewhat different
4 accounts of the order of events during Mr. End's response to Mr.
5 Troupe's self-declared mental health emergency on December 2, 2011,
6 there is no material difference in their accounts. It is clear that
7 Mr. End responded and offered counseling and that Mr. Troupe declined
8 to communicate with him. It is also apparent that when Mr. End
9 assessed him, Mr. Troupe had not harmed himself and there was nothing
10 from which Mr. End could reasonably infer that self-harm was imminent.

11 Around 4:30 pm, approximately five minutes after Mr. End left
12 the IMU for a second time, Mr. Troupe cut himself. Level 1-Initial
13 Grievance filed by David Troupe on Dec. 6, 2011 at 211, Ex. 6, ECF No.
14 53-6; Dec. 2, 2011 PER at 234, Ex. 6, ECF No. 53-6; Decl. of Walter
15 End at 16, ECF No. 53. Mr. End was contacted, appropriately and
16 timely returned to the IMU, and observed that Mr. Troupe had harmed
17 himself and smeared blood on his cell walls. Mr. Troupe was taken for
18 medical care, and Mr. End suggested that Mr. Troupe be admitted to the
19 mental health unit for self-harm watch. Dec. 2, 2011 PER at 234, Ex.
20 6, ECF No. 53-6; Decl. of Walter End at 16-17, ECF No. 53.

21 At approximately 4:50 pm, Mr. Troupe arrived in the trauma room
22 where he refused to answer questions asked by nursing staff. Dec. 2,
23 2011 PER at 231, Ex. 6, ECF No. 53-6. Nursing notes indicate that Mr.
24 Troupe had concealed a blade in an unhealed open left leg wound from
25 which he had removed the sutures and for which he had been refusing

26 after arriving at the IMU to see Mr. Troupe at his cell front. Second
Amended Complaint at 2, ECF No. 16.

1 treatment, and he used the blade to cut an approximately 10-centimeter
2 laceration in his right leg. Dec. 2, 2011 Note at 194, Ex. 4, ECF No.
3 53-4; Dec. 2, 2011 PER at 231, Ex. 6, ECF No. 53-6. He refused
4 medical treatment for his left leg at 4:55 pm and refused all medical
5 treatment at 5:00, stating, "I am tired of these bitch-ass games."
6 *Id.* After being assessed by a provider, he was cleared to go without
7 treatment. *Id.* At 5:05 pm, he was placed on the four-point restraint
8 table to prevent further self-harm. *Id.* Once there, Mr. Troupe
9 changed his mind and requested treatment for his right leg. *Id.*; Dec.
10 2, 2011 Note at 194, Ex. 4, ECF No. 53-4.

11 When the nurse practitioner began to suture his right leg wound,
12 she noted the following,

13 Mr. Troupe began to verbally escalate and stated
14 "Somebody's a bitch tonight, I must have really pissed you
15 off making you come in, if I knew your schedule I would cut
16 myself every time you were on. You must be on you [sic]
17 period, (sniffing the air) no you must be in menopause."
18 Mr. Troupe appeared to be sexually aroused when I was
19 suturing his laceration. He continued to state, "You
20 bitch, you know I can get your address and send a bunch of
21 inmates out to get you." At that point, he refused any
22 further medical care and I was unable to tie off the
23 running stitch do [sic] to his thrashing on the four point
24 table so it was removed.

25 Dec. 2, 2011 Note at 194, Ex. 4, ECF No. 53-4. On or shortly after
26 the day of the incident, a suicide risk assessment prepared by a
mental health provider stated that the cut on Mr. Troupe's leg
required 12 sutures, Suicide Risk Assessment at 180, Ex. 3, ECF No.
53-3; however the Court has not located any records documenting that
Mr. Troupe eventually consented to have the wound treated.

1 Mr. Troupe did not assert that he was attempting suicide on
2 December 2, 2011. He reported that his self-harming behavior was due
3 to being placed in a new cell that was filthy, though he did not
4 communicate this to Mr. End when Mr. End responded to his self-
5 declared mental health emergency. Dec. 2, 2011 Suicide Risk
6 Assessment at 180, Ex. 3, ECF No. 53-3. Mr. Troupe now states that,
7 "A cut on the body, especialy [sic] a deep cut is the beginning of a
8 suicide attempt because bleeding can lead to death." Response Brief
9 at 10, ECF No. 91. He provides no support for this assertion. *Id.*
10 Mr. Troupe states that his injury was serious because it required
11 stitches and could have become infected, bled excessively, or caused
12 the loss of his limb. Response Brief at 8, ECF No. 91. He attaches a
13 document from July 6, 2012, in which a doctor stated that the wound on
14 Mr. Troupe's lower left leg had been there off and on since 2009, that
15 he had consistently refused treatment, and that he had irritated it to
16 the point where his leg was in danger if his behavior persisted. July
17 6, 2012 PER, Attach. 8, ECF No. 91-1. Although Mr. Troupe's wound may
18 have posed a danger to his leg months after the events at issue here
19 due to Mr. Troupe's own actions in continuously irritating it, the
20 record demonstrates that WSP personnel always promptly and properly
21 offered treatment for his wounds.

22 Mr. Troupe states that on March 21, 2013, Mr. End told him it
23 was too bad Mr. Troupe did not kill himself on December 2, 2011.
24 Response Brief at 18, ECF No. 91. Mr. Troupe supports this with
25 affidavits from two other inmates. Attach. 14, ECF No. 91-1.

1 Mr. Troupe filed this case on March 28, 2013. Complaint, ECF
2 No. 1. In it, he asserts an Eighth Amendment deliberate indifference
3 claim against Mr. End for failing to respond rapidly enough on
4 December 2, 2011, when Mr. Troupe declared a mental health emergency
5 and failing to take steps to prevent a substantial risk of serious
6 self-harm. Second Amended Complaint at 5, ECF No. 16. More recently,
7 at his deposition on April 15, 2015, Mr. Troupe stated, "As far as
8 Walter End is concerned, that really wasn't that big of an issue for
9 me. I was actually in the process of thinking about - Well, I was
10 already thinking about it, but I was in the process of trying to think
11 about whether or not I was going to withdraw that lawsuit." Dep. of
12 David Troupe, Ex. 14, Decl. of Amy Clemmons, ECF No. 79-1. Mr. Troupe
13 has not taken steps to withdraw his lawsuit at this time.

14 II. LEGAL STANDARDS

15 A. Summary Judgment

16 Summary judgment is appropriate if the record establishes "no
17 genuine dispute as to any material fact and the movant is entitled to
18 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party
19 opposing summary judgment must point to specific facts establishing a
20 genuine dispute of material fact for trial. *Celotex Corp. v. Catrett*,
21 477 U.S. 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio*
22 *Corp.*, 475 U.S. 574, 586-87 (1986). A genuine dispute exists "if the
23 evidence is such that a reasonable jury could return a verdict for the
24 nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
25 (1986). If the non-moving party fails to make such a showing for any
26 of the elements essential to its case for which it bears the burden of

1 proof, the trial court should grant the summary-judgment motion.
2 *Celotex Corp.*, 477 U.S. at 322.

3 A party seeking or opposing summary judgment must support its
4 assertion that there is or is not a genuine dispute of material fact
5 by citing to particular materials in the record or "showing that the
6 materials cited do not establish the absence or presence of a genuine
7 dispute, or that an adverse party cannot produce admissible evidence
8 to support the fact." Fed. R. Civ. P. 56(c)(1). "If a party fails to
9 properly support an assertion of fact or fails to properly address
10 another party's assertion of fact . . . the court may . . . consider
11 the fact undisputed for purposes of the motion." Fed. R. Civ. P.
12 56(e). "[M]ere allegation and speculation do not create a factual
13 dispute for purposes of summary judgment." *Nelson v. Pima Cmty.*
14 *College*, 83 F.3d 1075, 1081-82 (9th Cir. 1996). "A conclusory, self-
15 serving affidavit, lacking detailed facts and any supporting evidence,
16 is insufficient to create a genuine issue of material fact." *Fed.*
17 *Trade Comm'n v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th
18 Cir. 1997).

19 **B. Eighth Amendment**

20 The Eighth Amendment prohibits the infliction of "cruel and
21 unusual punishments," U.S. Const. amend. VIII, and imposes a duty on
22 prison officials to provide humane conditions of confinement. *Farmer*
23 *v. Brennan*, 511 U.S. 825, 832 (1994). "A prison official's
24 'deliberate indifference' to a substantial risk of harm to an inmate
25 violates the Eighth Amendment." *Farmer*, 511 U.S. at 828. "For an
26 inmate to bring a valid § 1983 claim against a prison official for

1 violation of the Eighth Amendment, he must first objectively show that
2 he was deprived of something sufficiently serious." *Lemire v. Cal.*
3 *Dept. of Corr. and Rehabilitation*, 726 F.3d 1062, 1074 (9th Cir. 2013)
4 (internal quotations omitted). "[T]he inmate must show that he is
5 incarcerated under conditions posing a substantial risk of serious
6 harm." *Farmer*, 511 U.S. at 834. The Court must "assess whether
7 society considers the risk that the prisoner complains of to be so
8 grave that it violates contemporary standards of decency to expose
9 anyone unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25,
10 36 (1993). "[I]n the medical context, an inadvertent failure to
11 provide adequate medical care cannot be said to" state an Eighth
12 Amendment claim. *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976). "The
13 objective question of whether a prison officer's actions have exposed
14 an inmate to a substantial risk of serious harm is a question of fact,
15 and as such must be decided by a jury if there is any room for doubt."
16 *Lemire*, 726 F.3d at 1075-76.

17 "Next, the inmate must make a subjective showing that the
18 deprivation occurred with deliberate indifference to the inmate's
19 health or safety." *Lemire*, 726 F.3d at 1074. Deliberate indifference
20 exists when an official "knows of and disregards an excessive risk to
21 inmate health or safety; the official must both be aware of facts from
22 which the inference could be drawn that a substantial risk of harm
23 exists, and he must also draw the inference." *Farmer*, 511 U.S. at
24 837. The test for deliberate indifference is "subjective
25 recklessness." *Id.* at 839-40. "It is, indeed, fair to say that
26 acting or failing to act with deliberate indifference to a substantial

1 risk of serious harm to a prisoner is the equivalent of recklessly
2 disregarding that risk." *Id.* at 836.

3 "Whether a prison official had the requisite knowledge of a
4 substantial risk is a question of fact subject to demonstration in the
5 usual ways, including inference from circumstantial evidence." *Id.* at
6 842. "[P]rison officials who actually knew of a substantial risk to
7 inmate health or safety may be found free from liability if they
8 responded reasonably to the risk, even if the harm ultimately was not
9 averted." *Id.* at 844. "[P]rison officials who act reasonably cannot
10 be found liable under the [Eighth Amendment]." *Id.* at 845.

11 "Finally, plaintiffs alleging deliberate indifference must also
12 demonstrate that the defendants' actions were both an actual and
13 proximate cause of their injuries." *Lemire*, 726 F.3d at 1074.

14 **C. Qualified Immunity**

15 Qualified immunity shields government officials performing
16 discretionary functions from civil liability if their actions were
17 objectively reasonable in light of clearly established law at the time
18 they acted. See *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). The
19 Supreme Court has laid out a two-pronged inquiry for determining
20 whether a public official enjoys qualified immunity: (1) the trial
21 court examines the facts alleged in the light most favorable to the
22 plaintiff and determines whether the officer's alleged conduct
23 violated a constitutional right, and (2) the court decides whether
24 that right was clearly established at the time of the alleged
25 violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The court may
26 exercise its discretion as to which of the two prongs to address

1 first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). "The relevant,
2 dispositive inquiry in determining whether a right is clearly
3 established is whether it would be clear to a reasonable officer that
4 his conduct was unlawful in the situation he confronted." *Saucier*,
5 553 U.S. at 202. If an official's alleged conduct violated a clearly
6 established constitutional right of which a reasonable officer would
7 have known, he is not entitled to qualified immunity. *Id.*

8 **D. Injunction**

9 "An inmate seeking an injunction . . . must adequately
10 plead . . a violation" that is likely to continue. *Id.* at 846.

11 [T]o survive summary judgment, he must come forward with
12 evidence from which it can be inferred that the defendant-
13 officials were at the time suit was filed and are at the
14 time of summary judgment, knowingly and unreasonably
15 disregarding an objectively intolerable risk of harm, and
that they will continue to do so; and finally to establish
eligibility for an injunction, the inmate must demonstrate
the continuance of that disregard during the remainder of
the litigation and into the future.

16 *Id.* at 846. "Of course, a district court should approach issuance of
17 injunctive orders with the usual caution." *Id.* at 846-47.

18 **E. 28 U.S.C. § 1915**

19 Section 1915(g) states,

20 In no event shall a prisoner bring a civil action or appeal
21 a judgment in a civil action or proceeding under this
22 section if the prisoner has, on 3 or more prior occasions,
23 while incarcerated or detained in any facility, brought an
24 action or appeal in a court of the United States that was
dismissed on the grounds that it is frivolous, malicious,
or fails to state a claim upon which relief may be granted,
unless the prisoner is under imminent danger of serious
physical injury.

25 28 U.S.C. § 1915(g). A frivolous claim is one that lacks a basis in
26 law or fact, and a malicious claims is one filed "with the intention

1 or desire to harm another." *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th
2 Cir. 2013). A summary-judgment dismissal which states that the
3 dismissed action was frivolous, malicious, or failed to state a claim
4 counts as a "strike" under § 1915(g). *Blakely v. Wards*, 738 F.3d 607,
5 613 (4th Cir. 2013).

6 **III. ANALYSIS**

7 **A. Eighth Amendment**

8 The Court now analyzes whether Mr. End violated the Eighth
9 Amendment by (1) failing to respond rapidly enough to Mr. Troupe's
10 threat of self-harm, and (2) leaving Mr. Troupe in the IMU under the
11 same conditions after Mr. Troupe threatened self-harm.

12 The threshold issue is whether Mr. End's action or omission,
13 objectively, deprived Mr. Troupe of something "sufficiently serious"
14 and caused him to be "incarcerated under conditions posing a
15 substantial risk of serious harm." *Farmer*, 511 U.S. at 834; *Lemire*,
16 726 F.3d at 1074. This question of fact must be determined by the
17 jury "if there is any room for doubt." *Lemire*, 726 F.3d at 1075-76.
18 The Court finds that no reasonable jury could determine that Mr.
19 Troupe was deprived of something sufficiently serious and exposed to a
20 substantial risk of serious harm, when, according to Mr. Troupe, Mr.
21 End did not immediately report to Mr. Troupe's cell upon learning that
22 Mr. Troupe had declared he was experiencing a mental health emergency.
23 Additionally, no reasonable jury could find that the conditions of Mr.
24 Troupe's confinement in the IMU-sharps restriction, fingernail-
25 trimming order, and checks at least every 30 minutes-posed a
26 substantial risk of serious harm.

1 The record shows that Mr. Troupe consistently cut himself in a
2 non-life-threatening way. The record also shows that he was not
3 suicidal during the relevant time period. His wounds were potentially
4 serious only if left untreated or if repeatedly re-opened. WSP
5 personnel, including Mr. End, always offered prompt and proper medical
6 treatment to Mr. Troupe. Thus, any risk to Mr. Troupe's health was
7 the result of his own decision to refuse treatment and to repeatedly
8 harm himself in the same area. Mr. Troupe's self-harm was not
9 sufficiently serious, he was not incarcerated under conditions posing
10 a substantial risk of serious harm, and any harm he suffered was not
11 the result of Mr. End's actions or inaction on December 2, 2011.
12 Therefore, summary judgment for Mr. End is appropriate.

13 Even if the Court found a genuine dispute of material fact as to
14 whether Mr. Troupe was deprived of something sufficiently serious,
15 summary judgment for Mr. End would still be appropriate because Mr.
16 End did not have a "sufficiently culpable state of mind." *Farmer*, 511
17 U.S. at 834. Mr. End cannot be found liable under the Eighth
18 Amendment unless he knew of and disregarded an excessive risk to Mr.
19 Troupe's health and safety. *Id.* at 837. Mr. End "must both be aware
20 of facts from which the inference could be drawn that a substantial
21 risk of harm exists, and he must also draw the inference." *Id.*
22 "Whether a prison official had the requisite knowledge of a
23 substantial risk is a question of fact." *Id.* at 842.

24 Mr. End declares that, after reviewing the entirety of Mr.
25 Troupe's file and working with Mr. Troupe for two months, he did not
26 believe Mr. Troupe was suicidal or at substantial risk of serious

1 self-harm. Decl. of Walter End at 17-18, ECF No. 53. Instead, Mr.
2 End states that he agreed with other providers' assessments that Mr.
3 Troupe's self-harm was manipulative in nature. *Id.* at 18. The vast
4 majority of the information in Mr. Troupe's file supports Mr. End's
5 assessment. As to Mr. End's contacts with Mr. Troupe on December 2,
6 2011, the record before the Court does not demonstrate that Mr. End
7 was deliberately indifferent: Mr. Troupe had not harmed or threatened
8 to seriously harm himself.³ Based on his history, there was a risk
9 that Mr. Troupe might harm himself, but at that time and under the
10 existing circumstances, the risk was neither excessive nor
11 substantial. Mr. End's declaration indicates that he did not "draw
12 the inference" that a substantial risk of harm existed and the Court
13 finds, under the circumstances, there was no obvious risk to Mr.
14 Troupe that a reasonable prison official would have noticed. *Farmer*,
15 511 U.S. at 837; 842. Therefore, no reasonable jury could find that
16 Mr. End was deliberately indifferent.

17 Assuming *arguendo* that Mr. End knew of a substantial risk of
18 harm, he responded reasonably to the risk. *Id.* at 844-45 ("[P]rison
19 officials who act reasonably cannot be found liable under the [Eighth
20 Amendment].") When Mr. End learned that Mr. Troupe had declared a
21 mental health emergency, he responded to the IMU and assessed Mr.
22 Troupe, although the length of time it took for him to do so is
23 disputed. When Mr. End assessed Mr. Troupe (for the second time that
24 day), Mr. Troupe did not articulate a mental health emergency to Mr.
25 End and did not appear to Mr. End to be distressed. From his

26 ³ Instead, Mr. Troupe had threatened to remove his sutures. David Troupe,
Level 1-Initial Grievance at 211 (Dec. 6, 2011).

1 assessment, Mr. End determined that Mr. Troupe appeared normal and
2 decided he was not at risk of committing serious harm or suicide but
3 instead was trying to test response times for the purpose of filing a
4 grievance or a lawsuit. Based on his assessment of Mr. Troupe's
5 mental health, Mr. End believed that Mr. Troupe could safely remain in
6 the IMU under the same protective conditions and should not be placed
7 on the restraint table, which had been utilized in the past after Mr.
8 Troupe self-harmed to prevent continued self-harm. However, Mr.
9 Troupe's medical providers did not think the restraint table was a
10 long-term solution, as it too was harmful to Mr. Troupe's health. On
11 the record before it, the Court finds that Mr. End acted reasonably
12 and did not deliberately disregard a significant risk of serious harm
13 to Mr. Troupe.

14 Even if Mr. End made an incorrect diagnosis, he did not violate
15 the Eighth Amendment. *Domino v. Tex. Dept. of Criminal Justice*, 239
16 F.3d 752, 756 (5th Cir. 2001) (holding that when a provider believed
17 that an inmate was threatening suicide for secondary gain and not
18 genuinely, it was an incorrect diagnosis, not deliberate indifference
19 because "an incorrect diagnosis by prison medical personnel does not
20 suffice to state a claim for deliberate indifference."). Mr. End also
21 did not violate the Eighth Amendment because he took reasonable
22 actions that ultimately failed to prevent Mr. Troupe from harming
23 himself after Mr. End had left. *Id.* at 844 ("[P]rison officials who
24 actually knew of a substantial risk to inmate health or safety may be
25 found free from liability if they responded reasonably to the risk,
26 even if the harm ultimately was not averted."). Finally, Mr. End did

1 not violate the Eighth Amendment because he acted reasonably after Mr.
2 Troupe harmed himself by offering Mr. Troupe medical treatment and
3 recommending that he be placed on the restraint table to prevent
4 further harm.

5 The Court must address Mr. Troupe's statement that on March 21,
6 2013, Mr. End said to Mr. Troupe that it was too bad Mr. Troupe did
7 not kill himself in December 2011. Because Mr. Troupe's version of
8 events is supported by sworn affidavits from two inmates, Attach. 14,
9 ECF No. 91-1, and Mr. End has not asserted that he did not make this
10 statement, the Court takes Mr. Troupe at his word. The Court notes
11 that a statement of the sort made by Mr. End is certainly unkind and
12 likely unproductive to resolving Mr. Troupe's mental health problems.
13 However, this statement, made more than one year after the events at
14 issue in this case, does not inform the question of Mr. End's state of
15 mind on December 2, 2011, just two months after he began working at
16 WSP. Mr. End's March 21, 2013 statement was likely the product of
17 exasperation following approximately one and a half years of working
18 with Mr. Troupe and being the subject of a professional complaint
19 filed by Mr. Troupe. The statement does not change the fact that Mr.
20 End did not believe Mr. Troupe to be at substantial risk of serious
21 self-harm and responded reasonably on December 2, 2011.

22 Finally, for an Eighth Amendment claim to succeed, the action or
23 inaction complained of must be both an actual and proximate cause of
24 the injuries. *Lemire*, 726 F.3d at 1074; *White v. Roper*, 901 F.2d
25 1501, 1505 (9th Cir. 1990). An action is an actual cause of harm if
26 the harm would not have occurred but-for the action. *Conn v. City of*

1 *Reno*, 591 F.3d 1081, 1098 (9th Cir. 2009), *vacated by* 131 S. Ct. 1812
2 (2011), *reinstated in relevant part by* 658 F.3d 897 (9th Cir. 2011);
3 *White*, 901 F.2d at 1506. An action is a proximate cause of harm if
4 the harm was a foreseeable result of the action and not the result of
5 a non-foreseeable, intervening cause. *Id.* at 1061.

6 Here, the Court finds that the speed of Mr. End's response was
7 neither an actual nor a proximate cause of Mr. Troupe's self-harm.
8 Mr. Troupe was threatening self-harm prior to Mr. End's arrival in the
9 IMU. However, Mr. Troupe did not harm himself until *after* Mr. End had
10 checked on him and left the IMU. Therefore, Mr. End could not have
11 prevented the harm had he responded more quickly, and the speed of Mr.
12 End's response was not a but-for cause of Mr. Troupe's injuries.
13 Additionally, Mr. Troupe's injury was not a foreseeable result of Mr.
14 End's failure to immediately visit his cell. It was foreseeable that
15 if Mr. End arrived too slowly Mr. Troupe might harm himself prior to
16 Mr. End's arrival but not that Mr. Troupe would harm himself after Mr.
17 End checked on him because Mr. Troupe perceived Mr. End's response to
18 have been too slow and felt slighted. Mr. Troupe's apparently
19 retaliatory self-harm⁴ was not foreseeable, and Mr. Troupe's own
20 actions were the cause of his injuries, not the speed of Mr. End's
21 response to his self-harm threat.

22 IV. CONCLUSION

23 In sum, no reasonable jury could find that Mr. Troupe was
24 deprived of something sufficiently serious, nor that he was

25 _____
26 ⁴ There is also a suggestion in the record that Mr. Troupe self-harmed
because he was upset that his cell was dirty. Dec. 2, 2011 Suicide Risk
Assessment at 180, Ex. 3, ECF No. 53-3.

1 incarcerated under conditions posing a substantial risk of suicide or
2 serious self-harm. Additionally, no reasonable jury could find that
3 Mr. End's response to Mr. Troupe's self-declared mental health
4 emergency on December 2, 2011 was deliberately indifferent because Mr.
5 End believed that Mr. Troupe was not suicidal or at risk of serious
6 self-harm and made a reasonable decision to leave Mr. Troupe in the
7 protective conditions already present in the IMU after assessing his
8 mental health. After Mr. Troupe harmed himself, Mr. End responded and
9 offered Mr. Troupe prompt and proper care. Furthermore, the Court
10 finds that the speed with which Mr. End responded to Mr. Troupe's
11 threat of self-harm was not an actual or proximate cause of Mr.
12 Troupe's injuries. For these reasons, Mr. Troupe's Eighth Amendment
13 deliberate indifference claim fails as a matter of law, and summary
14 judgment for Mr. End is appropriate. Having found that summary
15 judgment for Defendant is warranted as to Plaintiff's Eighth Amendment
16 claim, the Court need not reach the qualified immunity or injunction
17 issues.

18 Defendant asks the Court to award a strike against Plaintiff
19 under 28 U.S.C. § 1915(g) because this case "ha[s] no basis in law or
20 fact" and "is part of a calculated plan by Mr. Troupe to use the legal
21 system to harass and intimidate DOC staff." Motion for Summary
22 Judgment at 19-20, ECF No. 50. Even though this case did not survive
23 summary judgment, it required extensive analysis, and the Court cannot
24 say that it was frivolous, malicious, or failed to state a claim.
25 Therefore, the Court declines to impose a strike under 28 U.S.C.
26 § 1915(g).

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's motion for summary judgment, **ECF No. 50**, is
3 **GRANTED.**

4 2. All pending dates and deadlines are **STRICKEN.**

5 3. Judgment is to be entered in Defendant's favor.

6 4. This file shall be closed.

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
8 Order and provide copies to all counsel and to Mr. Troupe.

9 **DATED** this 1st day of July 2015.

10 s/Edward F. Shea

11 EDWARD F. SHEA

12 Senior United States District Judge
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